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VIA ELECTRONIC MAIL

MuckRock News
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Re: Request for Information

Dear Ms. Haskins:

I write in response to your recent correspondence requesting information from Congressman G.K. Butterfield pursuant to the District of Columbia Freedom of Information Act. *See* D.C. Code §§ 2-531-539.

The D.C. Freedom of Information Act, which is cited in your request, applies to any “public record,” which is any document “retained by a public body.” D.C. Code § 2-502(18). The D.C. Code defines a “public body” as “the Mayor, an agency, or the Council of the District of Columbia.” D.C. Code § 2-502(18A). The term “agency” is similarly confined to agencies of the D.C. government. *See, e.g.,* D.C. Code § 2-502(3)-(5); *see also* DC.gov, Freedom of Information Act (FOIA) (explaining that the D.C. Freedom of Information Act applies to “[a]ll public bodies of the District government”), available at <https://dc.gov/page/freedom-information-act-foia>. In other words, the D.C. Freedom of Information Act applies to agencies of the D.C. government; it does not apply to Congress. *Cf.* 5 U.S.C. § 552 *et seq.*

Similarly, the federal Freedom of Information Act (“FOIA”)—on which the D.C. Freedom of Information Act was based—provides a statutory right of access to certain federal government records, but it does not apply to Congress. *See* 5 U.S.C. §§ 552(a) (statute applies only to “agencies” of the United States), 552(f)(1), 551(1)(A) (excluding Congress from the definition of “agency”); Order, *Smith v. U.S. Congress*, No. 95-5281, 1996 WL 523800 (D.C. Cir. Aug. 28, 1996) (“[FOIA] . . . does not apply to congressional documents.”) (citing *Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1978), *cert. denied*, 445 U.S. 927 (1980)); *Fraternal Order of Police, Metro. Police Dep’t Labor Comm. v. D.C.*, 52 A.3d 822, 829 (D.C. 2012). Congress, Congressional Members, and Congressional Committees were excluded from the definition of

“agency” because of separation of powers concerns, as well as their constitutional immunity from outside questioning about, and interference with, their legislative activities. *See* U.S. Const. art. I, § 6, cl. 1.

Finally, the Supremacy Clause of the U.S. Constitution ensures that the D.C. Freedom of Information Act cannot apply to federal offices. *See* U.S. Const. art. VI, cl. 2; *see also* *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 (1988) (“[F]ederal installations are shielded by the Supremacy Clause from direct state regulation”); *Hancock v. Train*, 426 U.S. 167, 179 (1976) (citing *Mayo v. United States*, 319 U.S. 441, 447-48 (1943)) (“[T]he federal function must be left free of regulation [by the states.]” (internal quotation marks omitted)).

In sum, Congressman Butterfield is not subject to the D.C. Freedom of Information Act and he will not be producing the documents requested. Thank you for your attention to this matter.

Sincerely,



Brooks M. Hanner
Assistant General Counsel
U.S. House of Representatives